

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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:
:

v.

**C.A. No. T20-0003
19001534664**

CLAUDE HOGUE

DECISION

PER CURIAM: Before this Panel on March 11, 2020—Magistrate Kruse Weller (Chair), Chief Magistrate DiSandro, and Magistrate Goulart, sitting—is Claude Hogue’s (Appellant) appeal from a decision of Magistrate Willian T. Noonan, denying a motion to vacate charged violations of G.L. 1956 §§ 31-15-12, “Interval between vehicles” and 31-24-1, “Times when lights required.” Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8. For the reasons stated herein, this matter is remanded for a new hearing due to the unavailability of a transcript.

I

Facts and Travel

On November 12, 2019, Appellant was stopped by Trooper Corey Hopkins on Route 95 in West Greenwich and issued Summons 19001534664 charging the Appellant with violating G.L. § 31-15-2, “Interval between vehicles” and § 31-24-1, “Times when lights required.” The Summons indicated a hearing date of December 10, 2019 at 9:00am at the Rhode Island Traffic Tribunal. On December 10, 2019, the Appellant failed to appear and was defaulted. The court imposed a \$85 fine on each violation. On December 18, 2019, the Appellant filed a motion to

vacate the default, alleging that he did not find the ticket among his papers until December 16, the week after he defaulted.

A hearing on the Appellants' motion to vacate was held on January 15, before Magistrate Noonan, who denied the Appellant's motion, and adjudicated the Appellant in contempt and imposed a \$500 fine for "disruptive, loud and profane" behavior at the hearing as indicated on the judgment sheet issued at the hearing.

Appellant then timely filed the instant appeal of that denial on January 16, 2020. At that time the Appellant was advised of his requirement to provide the Panel with a transcript of the hearing for our review. However, Appellant was informed that due to a malfunction in the Rhode Island Traffic Tribunal recording system, an audio recording of the trial could not be provided to Appellant for his use in generating a transcript. On March 11, 2020, Appellant appeared before this Panel for his scheduled appeal.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

"The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- "(1) In violation of constitutional or statutory provisions;
- "(2) In excess of the statutory authority of the judge or magistrate;
- "(3) Made upon unlawful procedure;

- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

In the instant matter, this Panel cannot meaningfully address Appellant’s arguments in the absence of a transcript. In accordance with Rule 21(h), this Panel remands this case to the hearing judge for a new hearing on Appellant’s motion to vacate only. The determination of contempt is not appealable and thus need not be reheard. Additionally, the fee requirement for Appellant’s generating of a new transcript is waived.

IV

Conclusion

This matter is remanded for a new hearing regarding Appellant's motion to vacate.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Chief Magistrate Domenic A. DiSandro III

Magistrate Alan R. Goulart

DATE: _____